

FRED R. CERMINARO

IBLA 81-34

Decided January 13, 1981

Appeal from decision of California State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer CA 8724.

Affirmed as modified.

1. Oil and Gas Leases: Generally--Oil and Gas Leases: Applications:
Generally--Oil and Gas Leases: Lands Subject To

The Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 (1976), expressly precluded leasing in national parks and national monuments. Therefore, the Department of the Interior has no authority to issue an oil and gas lease for lands in the Death Valley National Monument and an offer to lease land within the monument must be rejected.

APPEARANCES: Fred R. Cerminaro, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Fred R. Cerminaro has appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated September 24, 1980, rejecting appellant's offer to lease lands within Death Valley National Monument for oil and gas.

BLM rejected the offer for the following reasons: (1) The lands applied for are within Death Valley National Monument. Regulation

43 CFR 3103.1-1(b)(1) specifies that lands in national parks and monuments are not subject to leasing under the Act of February 25, 1920; 1/ (2) the lands are not described in the offer by legal subdivision, section, township, and range in accordance with 43 CFR 3101.1-4(a) and 43 CFR 3111.1-1(d); and (3) the lands in the offer run in a west to east direction for 8 miles or 8 surveyed sections, and, therefore, the offer is not in compliance with regulation 43 CFR 3110.1-3(a) which required that the lands in the offer shall be entirely within an area 6 miles square or within an area not exceeding 6 surveyed sections in length or width measured in cardinal directions.

In his statement of reasons on appeal Mr. Cerminaro amends his oil and gas lease offer to conform to the requirements of the regulation and also states that it is his belief that the prohibition against oil and gas leasing in national parks and monuments has expired or would be repealed in the future.

[1] Section 1 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 (1976), provides in relevant part: "Deposits of * * * oil * * * or gas, and lands containing such deposits owned by the United States, including those in national forests, but excluding lands * * * in national parks and monuments shall be subject to disposition in the form and manner provided by this chapter to citizens of the United States * * *." The exclusion of lands in national parks and monuments from oil and gas leasing is embodied in 43 CFR 3101.1-1(a)(1).

BLM ascertained that the lands described in the offer are located within Death Valley National Monument. A map submitted by appellant with the offer also shows the lands to be within the national monument and therefore unavailable for leasing.

The prohibition against oil and gas leasing in national parks and monuments, contrary to appellant's belief, has not expired. Further, the statutes and their implementing regulations create no provisions for holding oil and gas lease offers pending the formulation and passage of new laws.

The statutory prohibition against leasing lands in national monuments resolves the appeal, and there is no need to discuss the additional reasons given by BLM for rejecting the offer. Those reasons, however, are also correct.

1/ The BLM decision, apparently in error, has cited 43 CFR 3103.1-1(b)(1) as specifying that lands in national parks and monuments are not subject to leasing under the Act of February 25, 1920. The language referred to above appears at 43 CFR 3101.1-1(a)(1), and, therefore, the decision is modified to reflect that change.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

Douglas E. Henriques

Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Anne Poindexter Lewis
Administrative Judge

